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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,426	03/17/2004	Trevor Adrian	15474.3.1.1	3868
22913	7590	12/23/2005		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER LE, HUYEN D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,426

Applicant(s)

ADRIAN, TREVOR

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: support rods 336. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3, 8, 9, 11, 12, 18, 20-23, 29, 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 14, 15, 18, 19, 23-25 of copending Application No. 10/216,496. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of copending Application No. 10/216,496 disclose all of limitations of the claims of the patent application. Furthermore, the claims of copending Application No. 10/216,496 disclose a heat shield and a connector for mechanically coupled the heat shield to a housing.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1, 8-10, 12, 17-19, 21, 22, 28-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 43-45 and 47 of U.S. Patent No. 6,929,190. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims disclose all of the limitations of the applications claims. Furthermore, the patent claims disclose a plurality of interchangeable attachments.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolter (4,550,689).

The Wolter reference discloses a portable water heater comprising: a housing 1 having a plurality of walls 2,3,4,5; a fuel burner 24 configured to produce heat into the housing as fuel is burned; and a heat transfer conduit 34 fluidly transfer conduit being in thermal configured to transfer the heat produced by the fuel burner 24 to the water flowing through the heat transfer conduit 34 and to output heated water outside of the connected to a water source, the heat communication with the fuel burner 24 and the housing 1.

Regarding claims 2, 3, 22 and 23, the heat transfer conduit 34 comprises a coiled tube forming a cylindrical shape.

Regarding claims 4, 13 and 24, the coil tubing 34 is disposed in a horizontal axis in the housing.

Regarding claims 5, 14 and 25, the fuel burner 24, 26 is situated in relation to the heat transfer conduit so as to evenly distribute heat along the length of the heat transfer conduit.

Regarding claims 6, 15 and 26, the housing comprises a plurality of plates 18 being disposed about the heat transfer conduit and fuel burner and spaced apart from some of the plurality of the walls 2,3,4 of the housing 1.

Regarding claims 7, 16 and 27, the water heater comprises a portion 30 constituting a support rod disposed horizontally between two spaced apart vertical planes 18, the heat transfer conduit 34 is supported by the portion 30.

Regarding claims 8, 17 and 28, the heat transfer conduit is fluidly connected to an intake conduit 13.

Regarding claims 9, 18 and 29, the intake conduit is connected to a pump (col. 7, lines 42+).

Regarding claims 10, 19 and 30, the heat transfer conduit is fluidly connected to an outlet conduit 14, the outlet conduit terminating in spray head (col. 8, lines 50+).

Regarding claims 11, 20 and 31, one of the plurality of walls of the housing 1 comprises an upper surface 8 being substantially planar, the upper surface is capable of being used for heating items when needed.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller, Halmasy, Sr., Reid, Bjarnason et al, Lemke show a water heater having a fuel burner, a coiled tube and a housing.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Huyen Le
Examiner
Art Unit 3751

December 21, 2005